

REMARKS

Claims 119-177 have been rejected on the basis of obviousness-type double patenting over claims 37-50 of U.S. Patent 6,245,805 (the "'805 patent"). The Action states that although the conflicting claims are not identical, they are not patentably distinct because the compositions of the present claims appear to encompass the compositions of the patent, and that specifically, the taxane compositions of the patent comprising a cyclosporin enhancing agent and optionally other ingredients anticipate the present broader taxane compositions comprising carrier and a co-solubilizer. Once again, Applicants respectfully traverse the rejection.

The disclosure constituting claims 37-50 of the '805 patent would not have rendered the instant claims obvious. The arguments set forth in the response submitted July 8, 2003 are believed to establish that obviousness-type double patenting does not apply in this case. Thus, those arguments are incorporated by reference herein. Applicants reiterate that the existence of subject matter that is "overlapping" does not necessarily equate to obviousness. Accordingly, the Examiner is respectfully requested to specifically point out why he believes that the instant claims would have been obvious over the claims of the '735 patent. If, on the other hand, the Examiner believes that the '805 patent is in any way "anticipatory" of the instantly claimed invention, he is specifically requested to make such a rejection on the record. Otherwise, reconsideration and withdrawal of the rejection are respectfully requested.

Claim 119-177 have also been provisionally rejected on the basis of obviousness-type double patenting over Applicants' co-pending application no. 09/829,846. At the time the Office Action was mailed, this application was still pending. It has now issued as U.S. Patent 6,610,735 (the "'735 patent", copy enclosed). Accordingly, Applicants will treat the rejection of

obviousness-type double patenting. This rejection is also respectfully traversed.

There is not a single recitation of a "carrier" or a "co-solubilizer", or any embodiment thereof as disclosed in the present specification, in any of the 106 claims of the '735 patent. Applicants reiterate here too that the existence of subject matter that is "overlapping" does not necessarily equate to obviousness. Accordingly, the Examiner is respectfully requested to specifically point out why he believes that the instant claims would have been obvious over the claims of the '735 patent, or otherwise withdraw the rejection.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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